

## **REMARKS**

### **Summary**

This submission accompanying a request for continued prosecution is in response to the Office Action of June 30, 2003.

After entry of the amendment submitted herewith, claims 1-6, 8-25, 27-29, and 32-40 are pending and claims 7, 26, 30, 31 and 41 are cancelled. Claims 10-12 have been allowed, while claims 3, 14, 33, 37 and 40 have been deemed to be allowable if rewritten into independent form; those claims are herein amended into independent form and hence are believe now to be allowable.

In response to the examiner's objection to the drawings, new formal drawings have been ordered and will be submitted as soon as they are received from the draftsman, which should be within two weeks. In accordance with the requirement set forth in the last paragraph under the heading "Drawings" in the official action and in an abundance of caution to retain the application in a pending status, there is attached hereto a set of marked-up drawings showing the corrections and additions, which are being made by the draftsman, in red ink.

Further respecting the drawings, applicant requests clarification of what applicant perceives as an inconsistency in the official action of 30 June, in that on the PTO-326 form it states that the drawings filed on 5 June 2003 are "accepted" while in "Detailed Action" attached to the PTO-326 form under the subheading "Drawings" a number of objections to the drawings are set forth. Applicant believes that submission of the new drawings which are under preparation and which will reflect the changes marked in red on the drawings

submitted herewith will moot the objection to the drawings, but clarification of the apparent inconsistency in the official action respecting the drawings is still requested, out of an abundance of caution that the application remain in a pending status and continue towards allowance.

**Allowed and Allowable Claims**

The Examiner states at page 12 ¶ 11 of the Office Action that claims 10-12 are allowed. At the same time with regards to claim 12, the Examiner states at the specification lacks positive antecedent basis for the term “sinuous” and that claim 12 “will not be considered on the merits.” Applicants herein submit an amendment removing the term “sinuous” from claim 12. Applicants respectfully request that the Examiner reaffirm the allowance of the claims 10-12 on their merits.

The Examiner states at page 12 ¶ 12 of the Office Action that claims 3, 14, 33, 37 and 40 would be allowable if rewritten in independent form to incorporate all features of their respective base claims and any intervening claims. Applicants herein submit amendments to these claims, putting them into independent form either directly or indirectly, and respectfully request that the Examiner allow these claims.

**Objections Concerning the Drawings**

In the Office Action at pp. 2-4 ¶¶ 1-2, the Examiner objects to the drawings stating that they fail to comply with 37 C.F.R. §§ 1.83(a). The Examiner notes that Figure 6 does not show the dotted line configuration of some of the shorter

finger members. Applicants herein submit a marked version of Figure 6 showing the dotted line configuration currently being prepared by the draftsman.

The Examiner first states that the “means for adjusting the space between adjacent ones of said longitudinal bars” is claimed and must thus be shown in a drawing. Applicants have amended claim 2 to remove this limitation, thereby rendering the objection moot.<sup>1</sup>

The Examiner states that the “means for moving...along an endless circular path” is not explained. By way of nonlimiting example, applicants point out the drive sprockets 62, which are shown in Figure 5 and described in the Specification p. 19 ¶ 1. As another nonlimiting example, applicants point out drive sprockets 66 and 68, which are shown and described in Figure 5 (and described in the specification pp. 17-19). For at least these reasons, applicants believe that the drawings show and describe the claimed invention. Applicants respectfully request that the Examiner withdraw this objection.

The Examiner states that the “collection area” is not explained. By way of nonlimiting example, applicants point out conveyor belt 34 which is shown in Figures 5 and 10 and described with reference to collection areas in the Specification p. 15 ¶ 1, p. 16 ¶ 1 (and also in the last line of page 3 and the last line of page 5). Applicants also point out the discussion of the collection area on the last line of page 3 of the specification and the last line of page 5 of the specification. For at least these reasons, applicants believe that the drawings

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<sup>1</sup> By amending dependent claim 2, Applicants are not disclaiming any subject-matter from independent claim 1, which claim 2 is dependent on.

show and describe the claimed invention. Applicants respectfully request that the Examiner withdraw this objection.

The Examiner states that the hitch and the tractor need to be shown in a drawing. These appear in the new Figure 14 under preparation, as shown on the mark-up submitted herewith. The new Figure 14, which is a duplicate of Figure 13, except that a tractor and a hitch have been added.

To account for this additional drawing sheet, applicants herein submit an entire set of replacement drawings with corrected sheet numbers (e.g. 7/10 instead of 7/9, 2/10 instead of 2/9, etc..)

#### **Objections Concerning the Specification**

In the Office Action at pages 5-6 ¶ 3, the Examiner objects to the specification, stating that it lacks positive antecedent basis for certain items.<sup>2</sup>

As to claims 2, 7 and 12, the Examiner states that the specification does not provide antecedent basis for the term "sinuous." Applicants herein submit amendment to claims 2 and 12 (and claim 3), removing the term "sinuous." Claim 7 is herein cancelled.

As to claims 2 and 7, the Examiner states that the specification does not provide antecedent basis for positioning the horizontal bars. Applicants amend claim 2 to remove the feature from the claim. Claim 7 is herein cancelled.

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<sup>2</sup> For reasons stated in response to the previous Office Action of December 2, 2002, Applicants respectfully disagree with the Examiner on these points. By amending or canceling dependent claims 2, 7, 26, 30, and 31, applicants are not disclaiming any subject-matter from the claims from which the cancelled/amended claims were/are directly or indirectly dependent from (e.g. intervening claims and base claims).

As to claim 26, the Examiner states that the specification does not provide antecedent basis for "only some" of the fingers being rigid or only a "subset" being rigid. Applicants have cancelled claim 26.

As to claim 30, the Examiner states that the specification does not provide antecedent basis for separately adjusting the distance between the arrays at forward and rearward positions. Applicants have cancelled claim 30.

As to claim 31, the Examiner states that the specification does not show or disclose the claimed subject matter. Applicants have cancelled claim 31.

**Rejections Under 35 U.S.C. §§ 102(b) and 103(a)**

In the Office Action at pages 7-11, ¶¶ 4-11, the Examiner states that claims 1, 4-5, 23, 31, 34-36 and 41 are rejected under 35 U.S.C § 102(b) as being anticipated by U.S. Patent No. 1,429,187 ("Pocock"); claims 1-2, 4-5, 7-9, 13, 15-17, 18, 22-23, 27-33, 36 and 41 are rejected under 35 U.S.C § 102(b) as being anticipated by U.S. Patent No. 2,515,966 ("Polisena"); claims 13, 19-21, 24-26 and 38-39 are rejected under 35 U.S.C § 103(a) as being unpatentable over Pocock or Polisena; claims 13, 15, 22 and 32 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Polisena; and claim 6 is rejected under 35 U.S.C § 103(a) as being unpatentable over Polisena or Pocock or U.S. Patent No. 6,282,877 ("Yoder").

Applicants herein submit remarks directed to the rejected independent claims 1, 13, 34, 35, which applicants believe overcomes the cited references and puts the rejected independent claims, and the claims dependent therefrom,

into condition for allowance. These amendments do not present new issues, but address issues discussed in Applicants' response to the previous Office Action of December 2, 2002.

Applicants now reaffirm the following observation, which is quoted from Applicants' previous response:

[I]t is seen in Figure 1 of Polisens and Figure 2 of Pocock, that when the machine is moving over a specific plant to be harvested a very limited number of fingers will actually come in contact with the specific plant; usually a single pair of fingers contact the plant before the fingered area is moved past the plant, moving on to the next plant and thereby leaving unharvested fruit if the fruit was not harvested in one try....By contrast, in the present invention, an array is positioned upstanding so that one has the option of utilizing a *series* of horizontal finger pairs, whereby a plant that is not harvested by the first finger pair, might be harvested by the next finger pair, and the next finger pair, and so on.

Applicants herein submit amendments to more clearly address this feature. For example, the amendment to claim 1 removes the limitation of "generally upstanding longitudinally elongated" and instead is limited as follows:

Said finger members are positioned in substantially horizontal series so that, during travel, a successive finger member in the series is positioned to lift fruit that a previous finger member in the series unsuccessfully attempted to lift.

Moreover, independent claim 35 is amended using identical language, and claims 13 and 34 are amended using analogous language.


Applicants respectfully request that Examiner allow independent claims 1, 13, 34 and 35, and the pending claims dependent thereon, including dependent claims 2-6, 9, 13-25, 27-29, 32-33, and 36-40.

Applicants submit that applicants have fully responded to the Examiner's concerns and that all of the claims are in condition for allowance. Applicants respectfully request allowance on the merits of claims 1-6, 8-25, 27-29, and 32-40.

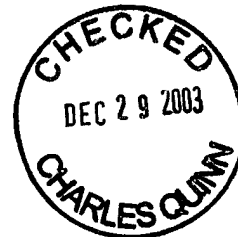
Applicants request that any questions concerning this matter be directed to the undersigned at (215) 299-2135.

Please charge all fees required in connection the acceptance and consideration on the merits of this paper and any accompanying papers to deposit account 50-1943.

Respectfully submitted,


Date: 26 DECEMBER 2003   
CHARLES N. QUINN  
Registration No. 27,223  
Attorney for Applicants

Fox Rothschild, LLP  
2000 Market Street, 10<sup>th</sup> Floor  
Philadelphia, PA 19103  
Tel: 215-299-2135  
Fax: 215-299-2150  
email: cquinn@foxrothschild.com



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UNDER 37 C.F.R. 1.8(a)

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BY: Sherry Barak

DATE: 12/29/03